THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
	:	
BRANDI S. NAVE,	:	
	:	Board Docket No. 12-BD-091
Respondent.	:	Bar Docket Nos. 2010-D234, 2012-D308,
	:	2013-D128, and 2013-D186
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 490964)	:	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

In a lengthy and detailed 102-page Report and Recommendation, Hearing Committee Number Five concluded that Respondent violated District of Columbia Disciplinary Rules ("Rules") 1.15(a) (failure to safeguard third-party funds); 1.15(b) (failure promptly to pay third-parties); 1.15(c) (failure promptly to deliver funds); and 1.15(d) (failure to distribute funds).[1] Rejecting a charge that Respondent had violated Rule 8.4(c) (dishonesty, fraud, deceit, or misrepresentation), the Hearing Committee also found that Respondent committed negligent misappropriation and, for that additional reason, violated Rule 1.15(a). The Hearing Committee recommended that Respondent be suspended from the practice of law for one year.

[1] Four of the charged Rule 1.15(b) and 1.15(c) violations were based on conduct prior to February 1, 2007. Those Rules were renumbered without substantive change, and shall respectively be referred to as 1.15(c) and 1.15(d).

* Consult the 'Disciplinary Decisions' tab on the Board on Professional Responsibility's website (www.dcattorneydiscipline.org) to view any prior or subsequent decisions in this case.

Both parties timely excepted to the Hearing Committee Report. Respondent contends that she violated no Rules. Disciplinary Counsel,[2] on the other hand, asserts that Respondent committed intentional misappropriation and urges that she be disbarred.

We adopt the Hearing Committee's findings of fact because they are supported by substantial evidence in the record as a whole. We have also made supplemental fact findings, citing directly to the transcripts and exhibits. *See* Board Rule 13.7.[3] The Board owes no deference to the Hearing Committee's proposed conclusions of law, and we review them *de novo*. *See In re Bradley*, 70 A.3d 1189, 1194 (D.C. 2013).

Based on our own detailed review, we conclude that Respondent committed 34 separate violations of Rules 1.15(c) and 1.15(d). We also find that Disciplinary Counsel proved intentional misappropriation and recommend that Respondent be disbarred.

PROCEDURAL HISTORY

In the matters at issue before us, Respondent represented personal injury claimants, all of whom had received chiropractic treatment.

On December 7, 2012, Disciplinary Counsel filed a ten-count Specification of Charges in Bar Docket No. 2010-D234, the essence of which alleged that Respondent had failed timely to pay amounts owed to one treating chiropractic group. On February 19, 2013, the day before her answer was due, Respondent moved to stay the disciplinary proceeding pending resolution of a Superior

[2] The Office of Bar Counsel initiated this proceeding. The Court of Appeals later changed the title of Bar Counsel to Disciplinary Counsel. We use the current title in this Report and Recommendation.

[3] Board Rule 13.7 provides, in pertinent part, "[u]pon conclusion of the oral argument or its waiver, the Board may affirm, modify, or expand the findings and recommendation of the Hearing Committee."

Court civil action brought against her by that chiropractor. An Ad Hoc Committee Chair recommended deferral, and on March 4, 2013 the Board Chair agreed.

Disciplinary Counsel withdrew the original Specification of Charges and, on March 13, 2014, filed the more comprehensive Specification of Charges now before us. In substance, it alleges that after settling 38 separate personal injury claims, Respondent failed timely to pay her clients' chiropractic fees and violated Rules 1.15(a), 1.15(b), 1.15(c), 1.15(d) and 8.4(c). Disciplinary Counsel also charged that on various dates Respondent's trust account balance fell below the aggregate amount due those providers, and she thus intentionally or recklessly misappropriated client funds in violation of Rule 1.15(a).

On April 1, 2014, Respondent again moved to defer the disciplinary proceedings pending resolution of civil litigation, by then brought by the two chiropractic practices involved in this disciplinary matter. The Chair of Hearing Committee Five concluded that Respondent "failed to establish … a substantial likelihood that the civil actions filed by [the chiropractors would] help resolve the allegations of misconduct." By Order dated April 18, 2014 the Board Chair agreed and denied the motion.

Respondent filed an Answer on May 21, 2014.[4] The hearing took place on October 1 and 2, and November 7 and 10, 2014. On May 29, 2015, Hearing Committee Five issued its Report and Recommendation, to which both parties filed exceptions.

On July 17, 2015, the day before her brief to the Board was due, Respondent moved the Board to reconsider its refusal to defer these proceedings, again because of the extant civil actions. By Order dated October 16, 2015, the Board Chair denied that motion, concluding that

[4] Disciplinary Counsel filed an Amended Specification of Charges on July 11, 2014 to correct typographical errors in the March 13 filing. Because the later-filed document made no substantive or numbering changes, Respondent was not required to file a supplemental Answer. Prehearing Transcript, July 11, 2014 at pp. 6-11.

Board Rules do not provide for post-hearing reconsideration of denied deferral motions, and reiterating that Respondent had failed to show a substantial likelihood that resolution of the civil litigations would help to resolve material issues involved in this matter.

On October 20, 2015, the eve of oral argument before the Board, Respondent yet again moved for reconsideration of the previous orders refusing to defer this matter. For the reasons earlier articulated by the Board Chair, that motion is denied.

Oral argument to the Board took place on October 22, 2015.

ANALYSIS

I. RESPONDENT COMMITTED 34 SEPARATE VIOLATIONS OF RULES 1.15(c) (FAILURE PROMPTLY TO DELIVER FUNDS) AND 1.15(d) (FAILURE TO DISTRIBUTE FUNDS)

A. Respondent's Practice

Respondent was admitted to the Bar of the District of Columbia Court of Appeals in 2005 and assigned Bar number 490964. She has consistently practiced plaintiffs' personal injury law, first with a small firm and, since 2008, as a solo practitioner. FF 1-2.[5] All the matters at issue in this proceeding followed a common pattern: Respondent's clients received medical treatment from a chiropractor, in connection with which Respondent and her clients signed the provider's Authorization and Assignment Agreement ("A&A") form. Those forms served as liens on the proceeds of any settlement amounts received by the client-patients, and obligated Respondent to "withhold such sums from any settlement [as] necessary to adequately protect" the medical provider. *See In re Mitchell*, 822 A.2d 1106, 1107 (D.C. 2003); FF 3.

[5] The Hearing Committee's Findings of Fact are designated "FF," and references to its Report and Recommendation are designated "HC Rpt." Disciplinary Counsel's and Respondent's briefs and exhibits are designated "BC Br.," BX," "Resp. Br." and "RX" respectively. "10/1/14 Tr." refers to the transcript of the first hearing day (which is paginated separately); "Tr." refers to pagination of subsequent transcripts.

Following her investigation of a case, Respondent would send a demand package to the involved insurance carrier. The carrier typically offered a settlement amount sufficient to pay some, but not all, of the chiropractic fees. To facilitate settlement, the chiropractic practices normally agreed to reduce their medical bills. FF 2-3.

In all of the personal injury cases involved in these proceedings, Respondent's clients were treated by chiropractors working for one of two chiropractic groups: that of Dr. Mohammad Yousefi (or his wholly-owned clinics), or that of Medical Support Services ("MSS"). FF 5.

B. The Yousefi Patients

Dr. Yousefi owned several chiropractic clinics in the Washington area, all of which followed the customary protocol. His patients signed an A&A form which his office sent to Respondent. In turn, Respondent or one of her office personnel endorsed it. After treatment, the clinic forwarded a medical report and bill to Respondent, who typically negotiated a reduction in the bill when settling with the insurer. The reduced medical bill was paid and the excess amount written off, with no further patient obligation. In the cases before us, Respondent's clients signed disbursement sheets prepared by Respondent, specifically approving payment of the initial (or, more typically, the reduced) bills.

Respondent's clients comprised a significant percentage of Dr. Yousefi's practice. He worked with Respondent for years, and had no payment problems until 2008 or early 2009. FF 4-9. In the ten cases before us where a Yousefi clinic provided medical services, Respondent presented her clients with disbursement sheets representing that she had "pre-paid" the chiropractor. In reality, she paid those bills after delays ranging from 41 months to more than six years after the client approved payment, and in one case did not pay the bill at all. FF 16-72. In one case (Count 2), Respondent received an insurance check for funds owed to Dr. Yousefi but

neglected to deposit it for more than two years. After it expired, she sought and received a replacement check from the carrier, but failed to pay the funds over to Dr. Yousefi for another four years. FF 27-35.

In May 2010, Dr. Yousefi complained to Disciplinary Counsel and, in 2013, he sued her to collect $350,000 he claimed was due him. FF 11-14; RX A-1.

Respondent challenges the Hearing Committee's findings that she failed promptly to pay Dr. Yousefi and consequently violated Rules 1.15(c) and (d). She argues that in eight of the ten cases, Dr. Yousefi and the clinics (which he wholly owned) could not agree where Respondent should send the checks to pay medical fees, so she was justified in withholding all the fees from all the clinics until those purported disputes were resolved. Dr. Yousefi, however, was the real party in interest since he owned all the small clinics. FF 6. In any event, Respondent's brief relies entirely on her own testimony to support her argument but the Hearing Committee did not credit that testimony and Respondent offered no documentation to support her claim. Moreover, Dr. Yousefi corrected billing errors when they were pointed out to him, and if Respondent was confused as to whom to pay, she had an obligation to pay the clinic named in the A&A. Instead, she did nothing. We thus find no fault in the Hearing Committee's rejection of this proffered excuse for not timely paying Dr. Yousefi. HC Rpt. 74-5.

Respondent offered a second rationale for failing to pay Dr. Yousefi which the Hearing Committee also rejected, and characterized as "duplicitous." HC Rpt. 18-19. According to Respondent, if Dr. Yousefi claimed to be owed $3,500 but Respondent conceded that she owed only $2,500, she was not required to pay him anything because the "entire amount was disputed." *Id.*; Tr. 603-06. In her Brief, Respondent relies for that principle on *In re Haar*, 667 A.2d 1350 (D.C. 1995). *Haar*, however, involved a dispute between a lawyer and his client as to the fees

owed the lawyer. When the client offered to settle the dispute for a lesser amount than the lawyer claimed, the lawyer paid himself that amount without actually settling, claiming it was undisputed. He refused to put the money back into trust when the client later said that she had not agreed he was entitled to anything. The Court held that if the client disputed the *entire* fee, all legal fees must remain in trust until the dispute was resolved. That case has no pertinence to the present situation. Here, the Hearing Committee found, and we agree, that after a claim had settled Dr. Yousefi was entitled to prompt payment of the reduced fee amount that Respondent admitted she owed, that was confirmed in Respondent's and the chiropractor's records, that was recorded on disbursement sheets, and that was approved for payment by her clients. Neither Respondent nor her clients disputed that she owed Dr. Yousefi *at least* the amounts recorded on the executed settlement disbursement sheets. As the Hearing Committee found, Respondent was required promptly to disburse those lesser, undisputed amounts, and to retain any *additional*, disputed amounts in trust. HC Rpt. 67-8. Respondent's argument that she was entitled to withhold *all* funds from Dr. Yousefi and from MSS (Resp. Br. at 22-23) ignores the clear language of Rule 1.15(d) mandating that "the undisputed portion shall be distributed and the portion in dispute shall be kept separate by the lawyer until the dispute is resolved."

To avoid any issue about the amounts Respondent owed Dr. Yousefi for her client-patients, Disciplinary Counsel conservatively charged Respondent only with failing to make prompt payment of the lesser, clearly established amounts that appeared on the disbursement sheets her clients signed. These were amounts that Respondent believed, and the Hearing Committee found, were owed to the clinics. Tr. 262. We have also adopted this conservative approach, and have based our analysis and conclusions solely upon those lesser amounts that the Hearing Committee found to be incontrovertibly due and owing.

C. The MSS Patients

Respondent's procedures with MSS patients were similar to those with the Yousefi clinics. MSS contracted with two chiropractors (Henry Jenkins and Lorenzo Austin) who treated patients and then prepared internal forms upon which MSS administrative staff later relied to prepare bills sent to Respondent. As did Dr. Yousefi, MSS often reduced its bills to facilitate claims settlements. Respondent's payments to MSS began to slow in 2009 or 2010. In all but two MSS matters, at least nine months elapsed between her receipt of settlement funds and payment to MSS. FF 95-245.

As with the Yousefi Counts, Respondent's attempted justification of her tardy payments to MSS relies essentially on her own testimony, which the Hearing Committee rejected. Respondent claims that following a hiatus in her practice in early 2012, she returned to her office and found many communications from insurance company investigators suggesting MSS billing fraud. She contends that she personally undertook to investigate MSS's billing practices, and delayed paying MSS the amounts it was owed until she completed her investigation. The Hearing Committee rejected that excuse. FF 73-79, 88, 90; HC Rpt. 102. Although the Hearing Committee heard testimony that some of MSS's initial bills were excessive, MSS's reduced bill amounts – the amounts Respondent's clients approved for payment – were appropriate. Tr. 36-48. In any event, Respondent produced no probative documents to support her assertion that she had been investigating billing fraud. Her challenge to the Hearing Committee's finding of fact in that regard (Resp. Br. at 20) cites only three documents, which the Hearing Committee appropriately found to

be inconsequential billing inquiries and routine challenges from insurance companies. FF 90; Resp. Br. at 18-19, n.11; Tr. 766-68.[6]

The Hearing Committee also concluded that Respondent's so-called "investigation" into MSS's billing practices was not triggered by billing fraud but rather by MSS's complaint to Disciplinary Counsel, which Respondent learned about in August 2012. FF 73-83. Respondent did not suggest fraud by MSS until October 2012, when she notified Doctors Jenkins and Austin (who no longer worked at MSS) that MSS was billing for services they never performed, and that their licenses were at risk. MSS denied any impropriety, and Respondent did not answer its several requests for the specifics of her claims. Respondent's files contained no evidence that insurance companies were investigating MSS's bills, and she acknowledged on cross-examination that she was not seriously concerned about the purported investigations. Nevertheless, the individual doctors were so concerned – as a result of what the Hearing Committee characterized as Respondent's "threats" and "bullying" – that they retained a lawyer, Eric Tyrone, to represent their interests. FF 79–84, 90; HC Rpt. 69-72; Tr. 346.

Beginning in late November 2012, Mr. Tyrone met with Respondent and purported to reduce many of the MSS bills at issue in this disciplinary matter, notwithstanding that Mr. Tyrone's individual clients had questionable authority to bind the MSS corporate entity. FF 74-87. Even then, Respondent continued to delay making payments. Her intransigence in that regard actually prejudiced many of her clients: Respondent not only exposed them to direct claims by MSS for payment of its bills (for which they remained responsible), but increased that exposure because

[6] For example, Respondent asserts that the transcript of a conversation between her client (Shelaya Wright) and a carrier representative shows potential fraud, but that conversation evidently took place in the summer of 2011, after which the carrier paid the claim. *See* RX D-6; p. 30, *infra*.

MSS, not having been paid, withdrew many of the invoice reductions to which it had earlier agreed. HC Rpt. 69; *see*, Counts 16, 19, 22, 23, 25, and 31, *infra*.

Finally, again citing only her own testimony, Respondent also claims that the amounts shown on the disbursement sheets signed by her clients were not amounts she was required to pay the providers, but represented mere settlement proposals. Resp. Br. at 39. This claim too was properly rejected by the Hearing Committee, since it is flatly inconsistent with the terms of the disbursement sheets and the requirement of Rule 1.5(c) that, after a settlement, a lawyer must provide to the client a written statement showing the remittance to the client and the method of its determination. HC Rpt. 66. The "method of determination" necessarily includes accounting for funds due to health care providers pursuant to A&A's, which reduce a client's payout. Once Respondent had prepared disbursement sheets and her clients approved them, Respondent was obligated to distribute the money accordingly or, in extraordinary cases, consult with the client and prepare a revised disbursement sheet. No such revisions took place in this case and none of her files contains a revised disbursement sheet; Respondent's argument is fanciful at best.

D. Respondent Violated Rules 1.15(c) and 1.15(d) in 34 Separate Matters

Rules 1.15(c) and 1.15(d) lay out a lawyer's duty to safeguard the property of others. Rule 1.15(c) states that upon receiving funds in which a client or third person has an interest, a lawyer shall "promptly notify" the client or third person and "promptly deliver" funds that the client or third person is entitled to receive. Rule 1.15(d) states that if a dispute arises concerning entitlement to funds, the "undisputed portion shall be distributed and the portion in dispute shall be kept separate by the lawyer until the dispute is resolved."

A lawyer must pay only those third parties who have "just claims" to funds. Rule 1.15 Comment [7]. An A&A, such as those at issue in this case, creates a lien against settlement funds

in favor of the treating medical provider, and is a "just claim." *In re Bailey*, 883 A.2d 106, 117-18 (D.C. 2005) (quoting Legal Ethics Opinion No. 293 at 165); HC Rpt. 65-6. Respondent recognized as much, since she specifically designated on her disbursement sheets the amounts to be paid to the providers, and her clients unambiguously authorized those payments.

Absent extenuating circumstances, Respondent should have paid the chiropractors expeditiously. *See In re Edwards*, 990 A.2d 501, 520-21 (D.C. 2010) (appended Board Report) (Respondent had "no excuse for not returning [the] money immediately"). Disciplinary Counsel contends that Respondent failed to comply with the Rule's mandate that she promptly pay the amounts due. Here, Respondent proffered excuses for her delays in making payment but, as we have indicated, the Hearing Committee properly rejected every one of them.

There is no bright-line test for what constitutes "prompt" payment. *In re Ross*, 658 A.2d 209, 211 (D.C. 1995). Rather, a case-specific inquiry is required. *In re Martin*, 67 A.3d 1032, 1046 (D.C. 2013); *In re Moore*, 704 A.2d 1187 (D.C. 1997) (per curiam) ("no doubt" that six-month delay in paying medical providers is not "prompt"); *Ross*, 658 A.2d at 211 (11-month delay was not prompt). In the MSS cases, the Rule's promptness mandate was reinforced by the terms of the MSS A&A agreements Respondent signed: the "sums [were] to be paid at the time the compensatory monies [were] received." RX E-12 etc.

Assessing the "promptness" with which Respondent paid medical providers necessarily depends on the dates she received the settlement funds from which those disbursements were to be made. The inadequacy of Respondent's records caused the Hearing Committee some uncertainty in that regard, and Respondent's characterizations of the dates on which her cases "settled" was elusive at best. *See* HC Rpt. 67; Tr. 507-08, 554, 761-62. The Hearing Committee felt unable to determine exactly when Respondent received settlement payments from the

insurance carriers. As a consequence, the Hearing Committee looked to the dates of the disbursement sheets, and reasoned that Respondent should have paid the providers within 90 days thereafter "in the absence of evidence that further delay was justified." HC Rpt. 67.[7]

Respondent challenges that conclusion, contending that disbursement sheets were simply preliminary and tentative "internal form[s]" used by Respondent that did not evidence her actual receipt of funds. Resp. Br. at 1; Tr. 508, 760-62.

We reject Respondent's characterization of the disbursement sheets. As the Hearing Committee concluded, they are precisely what they purport to be: final documents reflecting the financial components of each settlement, containing the client's explicit approval of the disposition of settlement funds.

Moreover, our own review of the record obviates the need for us to assess the soundness of the Hearing Committee's 90-day rule of thumb. There is no ambiguity as to the dates upon which Respondent received the settlement monies in any of these cases, because her Answer to the Specification of Charges, received in evidence, unequivocally established every one of them. Those dates, conceded by Respondent in her Answer, are entirely consistent with the chronological histories in all of the cases at issue, and many were also precisely confirmed in a claim letter written by Respondent's attorney to Dr. Yousefi on March 11, 2013. RX C-3. As to each matter, therefore, we have ample evidence clearly and convincingly establishing the date upon which Respondent received settlement funds. We are thus in a position to make the case-specific assessment of the "promptness" of ensuing disbursements as contemplated by *In re Martin*, *supra*.

[7] The Hearing Committee premised that conclusion upon evidence that it may take up to three months for a chiropractor to be paid after a settlement is reached. HC Rpt. 67, n.34.

Using that methodology, we find that Respondent failed promptly to pay providers, and violated Rule 1.15 (c) and 1.15(d), in 34 of the 37 matters at issue. The chiropractors had a lien on the settlements for the amounts they were indisputably owed. *In re Smith*, 817 A.2d 196, 198 n.1 (D.C. 2003). Respondent was required promptly to disburse those amounts. Ethics Op. 293 at 165 ("if there is no legitimate dispute about who is entitled to part … of the funds, the lawyer must disburse the undisputed portion accordingly"). We therefore assess whether, with respect to each case, Respondent "promptly delivered" funds the medical providers were entitled to receive.

Patients of Dr. Yousefi

Count 1: Marjorie Barnes

Marjorie Barnes was injured in October 2006. She and Respondent signed an A&A form in favor of a Yousefi clinic that same month. Total chiropractic charges were $5,633, but that amount was decreased to $3,133 due to a $2,500 Personal Injury Protection ("PIP") payment made directly to Dr. Yousefi by the carrier.[8] On July 16, 2007 Respondent's staff requested a further reduction to $1,156, and Dr. Yousefi agreed.

On August 1, 2007, Respondent received an $8,200 settlement payment, and Ms. Barnes signed a disbursement sheet authorizing the $1,156 disbursement to Dr. Yousefi. Respondent never paid Dr. Yousefi anything on behalf of Ms. Barnes, and refuses to do so because she claims he will not sign a release accepting $1,156 as full and complete payment. FF 16-26; BX B (Specification of Charges) ¶8; BX D (Respondent's Answer to Specification of Charges) ¶8; HC Rpt. 73. Respondent also contends that "there was a dispute over how much money" she owed on behalf of Ms. Barnes. Resp. Br. at 15.

[8] PIP benefits are paid by the injured party's carrier to compensate for out-of-pocket expenses, including medical expenses. HC Rpt. 13, n.1.

The Hearing Committee's finding as to the amount owed on behalf of Ms. Barnes is supported by substantial evidence. Moreover, there was no legitimate basis upon which Respondent could properly condition paying the amount owed upon execution of a release; this is the sort of coercion that Rule 1.15(d) forbids. HC Rpt. 68-69. By refusing to pay the provider on behalf of Ms. Barnes, Respondent violated Rules 1.15(c) and 1.15(d).

Count 2: D. F.

D.F., a minor patient of Dr. Yousefi, was injured on September 21, 2006. Eight days later, her mother signed an A&A in favor of a Yousefi clinic. On October 16, 2006, a member of Respondent's staff signed the A&A on her behalf. On August 1, 2007, Respondent received a $4,000 settlement payment.

On October 29, 2007, Respondent advised D.F. that she had received a PIP check and asked D.F. to authorize Respondent to pay it over to medical providers. The client signed the authorization the next day. On October 29, 2007, representing that the $2,500 PIP payment was "in process," Respondent asked Dr. Yousefi to accept that amount in full payment of his bill; the doctor later agreed to do so. Finally, on October 29, Respondent prepared a Client Disbursement sheet reflecting the $2,500 PIP payment to the clinic and a zero net balance due it.

Respondent, however, did not deposit the 2007 PIP check in her escrow account and did not pay it over to Dr. Yousefi at that time. Respondent testified at the hearing that the clinic had confirmed receipt of the PIP check from the carrier, but the Hearing Committee rejected that testimony because there was no documentation to support it. HC Rpt. 73. Instead, the PIP check sat in Respondent's file for over two years because, she claimed, she had "assumed it was null and void" notwithstanding that a simple telephone call to the insurance company would have proved

differently. HC Rpt. 73; Tr. 589; Resp. Br. at 16 (Respondent "*assumed* the check she received was a duplicate") (emphasis added).

In 2010, Dr. Yousefi advised Respondent's office that he had not received the PIP payment, and the insurance carrier confirmed that the 2007 PIP check had not been cashed. On January 15, 2010, Respondent's office returned the 2007 PIP check to the carrier and asked it to reissue it. On April 20, 2010, the carrier reissued the $2,500 PIP check.

Almost three years later, in March 2013, counsel for Respondent prepared a "Form of Disbursement Authorization" asking Dr. Yousefi to accept $2,500 in full settlement of the amount of D.F.'s bill. Dr. Yousefi signed, but did not date this document. On April 11, 2014, Respondent paid Dr. Yousefi $2,500 for the PIP payment on behalf of D.F. FF 27-35; BX B ¶12; BX D ¶12.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of D.F. by failing to pay Dr. Yousefi $2,500, received in 2007 (and received again in April 2010) but not paid out until April 2014. Even assuming that there was confusion about the PIP payment in 2007 as Respondent claimed, she received a second PIP check in April 2010 and nevertheless failed to pay it over for four more years, and then only after unjustifiably insisting that Dr. Yousefi sign a release.

Count 3: Markitta Robinson

Markitta Robinson was injured in September 2007. She and Respondent signed an A&A in favor of a Yousefi clinic the following month. In January 2009, the clinic agreed to reduce its chiropractic bill from $5,395 to $3,616. The clinic had received a $1,116 PIP payment, so it was due a net payment of $2,500. On or about January 16, 2009, Respondent received settlement funds totaling $17,500, and that same day Ms. Robinson signed a disbursement sheet approving the $2,500 disbursement. FF 36-40; BX B ¶19; BX D ¶19. Respondent failed to pay the clinic for more than five years – until April 11, 2014 – and then paid only after Dr. Yousefi signed a release

tendered by Respondent's counsel in this matter. FF 42. The Hearing Committee rejected Respondent's claim that she did not pay because of confusion over the amount owed and the identity of the proper payee. HC Rpt. 75.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Markitta Robinson by failing to pay Dr. Yousefi $2,500 for more than five years. HC Rpt. 74-75.

Count 4: Charlene Pitts

Charlene Pitts was injured on September 6, 2009. Five days later, she and Respondent signed an A&A in favor of Yousefi Chiropractic Clinic. In February 2010, Dr. Yousefi agreed to reduce the clinic bill from $5,395 to $2,100. The claim settled for $4,890. On December 28, 2010, Respondent received the settlement payment and Ms. Pitts signed a disbursement sheet approving payment of the reduced medical fee.

Respondent paid Dr. Yousefi nothing until April 11, 2014, when she paid him $2,100, again only after Dr. Yousefi signed a release form tendered to him by Respondent's counsel in this disciplinary matter. FF 43-46; BX B ¶23; BX D ¶23; HC Rpt. 76-77. There was no dispute that Respondent owed the clinic at least $2,100 and her failure to pay that amount for more than three years violated Rules 1.15(c) and 1.15(d). HC Rpt. 76-77.

Count 5: Bryant Jones

Bryant Jones, another patient of Dr. Yousefi, was injured on December 1, 2007. On December 7, 2007, Mr. Jones executed an A&A in favor of Yousefi Clinics; the form was endorsed by Respondent's staff the following April. In March 2008, Mr. Jones and Respondent's staff executed a second A&A in favor of Prime Care Health Center, another Yousefi Clinic. In February 2010, the clinics agreed to accept reduced medical payments of $1,377 and $1,150 respectively.

On September 8, 2010, Respondent received a $10,000 settlement, and Mr. Jones signed a disbursement sheet authorizing payments to the clinics totaling $3,370. Again, however, Respondent paid nothing until she issued two separate checks for $1,378 and $1,150 on April 11, 2014, only after Dr. Yousefi signed a release form prepared by Respondent's counsel in this matter. The Hearing Committee rejected Respondent's claim that a PIP payment rendered uncertain the amount due the clinics. FF 47-51; BX B ¶27; BX D ¶27; HC Rpt. 77-78.[9]

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Bryant Jones by failing to pay two of Dr. Yousefi's clinics an aggregate $2,528 for three and one-half years. HC Rpt. 77-78.

Count 6: Barbara Way

Barbara Way, a patient of Dr. Yousefi, was injured on November 14, 2008. Ms. Way and a member of Respondent's staff signed an A&A in favor of Prime Care Health Center in mid-December 2008. Respondent's office requested, and Prime Care approved, a bill reduction from $4,360 to $2,700 in May 2010. On or about June 9, 2010, Respondent received a settlement payment of $9,500, and on June 15, Ms. Way signed a disbursement sheet authorizing the $2,700 payment to the clinic. Once again, however, Respondent did not pay the clinic until April 2014, only after Dr. Yousefi signed a release presented to him by Respondent's attorney. FF 52-55; BX B ¶31; BX D ¶31.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Barbara Way by failing to pay her medical provider for almost four years. HC Rpt. 78.

[9] Mr. Jones approved a total payment of $3,370 to the clinics, but Respondent paid them only $2,527, leaving $843 of settlement proceeds unaccounted for. This fact troubled the Hearing Committee, but it made no findings in that regard since Disciplinary Counsel had filed no pertinent charge and the record in that respect was undeveloped. HC Rpt. 78, n.37.

Count 7: Minnie Ward-Haston

Minnie Ward-Haston was Dr. Yousefi's patient and was injured on December 17, 2009. On January 8, 2010, she signed an A&A in favor of Yousefi Chiropractic Clinic. Respondent's paralegal signed the A&A twelve days later. The clinic agreed to reduce its fee from $5,230 to $3,000, in response to Respondent's May 19, 2010 request. On July 25, 2010, Respondent's office received a $12,000 settlement payment, and the client signed a disbursement sheet authorizing payment of the reduced medical fee.

Almost three years later, in March 2013, counsel for Respondent prepared a release form asking Dr. Yousefi to accept $3,000 in full settlement of the amount of Ms. Ward-Haston's bill. Dr. Yousefi signed, but did not date this document, and Respondent paid that amount on April 11, 2014. FF 56-59; BX B ¶35; BX D ¶35.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Minnie Ward-Haston by failing to pay her medical provider for almost four years. HC Rpt. 78-79.

Count 8: Sherlita Boyd

Sherlita Boyd, another patient of Dr. Yousefi, was hurt on April 4, 2010. She signed an A&A in favor of Yousefi Chiropractic Clinic on April 7, 2010, and Respondent signed it on April 15. Respondent received an $8,000 settlement check on August 10, 2010, and on that date the client signed a disbursement sheet authorizing payment to the provider of an agreed-upon reduced fee of $2,567. Respondent, however, did not pay that amount until April 11, 2014, and only after Dr. Yousefi signed a release form tendered to him by Respondent's attorney. FF 60-62; BX B ¶39; BX D ¶39.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Sherlita Boyd by failing to pay her medical provider for almost four years. HC Rpt. 79.

Count 9: Kendra Whitaker

Kendra Whitaker, a patient of Dr. Yousefi, she was injured on March 4, 2010. Within two weeks she and Respondent signed an A&A in favor of Yousefi Chiropractic Clinic. On August 16, 2010, Respondent received a $7,100 settlement check, and the client signed a disbursement sheet authorizing a payment of $3,371 to the clinic, representing a reduced chiropractic fee of $1,241 plus a PIP check in the amount of $2,130 that Respondent had placed in her account. Tr. 224-25.

Respondent paid nothing until April 11, 2014 when she paid the clinic $3,371, again only after Dr. Yousefi signed a release form sent to him by Respondent's lawyer. FF 63-66; BX B ¶43; BX D ¶43.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Kendra Whitaker by failing to pay her medical provider for almost four years. HC Rpt. 80.

Count 10: Claudia Ortiz

Claudia Ortiz was Dr. Yousefi's patient following an injury sustained on November 19, 2007. On December 5, 2007, she completed an A&A in favor of Yousefi Clinics, and Respondent's employee signed it on April 4, 2008. On March 11, 2009, the clinic reduced Ms. Ortiz's bill from $2,523 to $1,523. Respondent received an $11,000 settlement payment on October 25, 2010, and that same day the client signed a disbursement sheet authorizing the reduced disbursement to the clinic.

Respondent, however, did not pay the clinic until April 11, 2014, after Dr. Yousefi signed a release form given to him by Respondent's lawyer in this matter. FF 67-72; BX B ¶51; BX D ¶51.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Claudia Ortiz by failing to pay her medical provider $1,523 for forty-one months. HC Rpt. 80.

Patients of MSS

Count 12: Tiffany Quarles[10]

Tiffany Quarles was injured on September 15, 2011. On September 29, she signed an A&A in favor of MSS and Dr. Inder Chawla, a physiatrist who rendered intake services for MSS. Tr. 286. In January 2012 MSS and Dr. Chawla agreed to reduce their fees to $4,350 and $250 respectively. On January 26, 2012, Respondent received a $14,000 settlement and prepared a client disbursement sheet approving the reduced provider payments. Ms. Quarles signed the sheet the following day.

Although Respondent paid to Ms. Quarles her portion of the settlement funds a week later, she did not pay Dr. Chawla until July 20, 2012. She paid MSS $3,700 on February 6, 2013, only after Eric Tyrone – the attorney for the doctors formerly affiliated with MSS (*see supra pp*. 7-9) – purported to approve a further fee reduction. FF 95-103; BX B ¶59; BX D ¶59.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Claudia Ortiz by delaying payment to Dr. Chawla for five months, and delaying payment of $3,700 to MSS for more than one year. HC Rpt. 81.

Count 13: K'Vonté Petty

K'Vonté Petty was injured on October 19, 2011. Two days later his mother signed an A&A on his behalf. On November 7, 2011, Respondent signed the A&A form. The claim settled on March 14, 2012, when Respondent received a $7,088 settlement payment and prepared a

[10] Disciplinary Counsel did not pursue the allegations contained in Count 11 of the Specification of Charges, but we are required to consider them. HC Rpt. 31; *see In re Mazahery*, Board Docket No. 10-BD-088 (BPR Oct. 4, 2013) (finding that Disciplinary Counsel does not have the unilateral authority to dismiss charges approved by a Contact Member and dismissing the abandoned charges based on a failure of proof); *In re Reilly*, Bar Docket No. 102-94 at 4-5 (BPR July 17, 2003) (same). Based on our review of the record, we find that Disciplinary Counsel failed to sustain the charges alleged in Count 11.

disbursement sheet reflecting $1,219 due MSS. The client signed the form the same day. Respondent, however, did not pay MSS until February 1, 2013. FF 104-07; BX B ¶63; BX D ¶63.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of K'Vonté Petty by failing to pay his medical provider for more than ten months. HC Rpt. 81-82.

Count 14: Tony Jones

Tony Jones, a patient of MSS, was injured on July 21, 2011. On August 3, he signed an A&A in favor of MSS, and Respondent signed it on September 19, 2011. Respondent received a settlement check for $4,500 on May 18, 2012 and that same day, MSS agreed to accept $800 in satisfaction of its bill. Three days later the client signed a disbursement sheet authorizing the payment to MSS. On May 25, Respondent paid Mr. Jones his $992 net settlement proceeds. Respondent did not pay MSS until August 24, 2012. FF 108-14; BX B ¶67; BX D ¶67.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Tony Jones by failing to pay MSS $800 for more than three months. HC Rpt. 82-83.

Count 15: Barbara Brown

Barbara Brown was injured on August 26, 2011. She signed an A&A in favor of MSS and Dr. Chawla on August 30, and Respondent signed it on September 21, 2011. On May 1, 2012, Respondent requested and received a fee reduction from MSS. The next day Respondent received an $11,225 settlement check and Ms. Brown signed a disbursement sheet authorizing a $500 payment to Dr. Chawla and a reduced payment of $2,594 to MSS. Although Respondent paid her client the net settlement proceeds on May 11, 2012 she did not pay MSS or Dr. Chawla.

Three months later MSS – having learned of the settlement – attempted to collect its fees directly from Ms. Brown. Nevertheless, Respondent did not pay MSS until February 1, 2013, three months after Respondent prepared, and later received, a form from Mr. Tyrone, the attorney

for the former MSS affiliated chiropractors, purporting to reconfirm the MSS fee reduction. FF 117-23; BX B ¶71; BX D ¶71. The Hearing Committee rejected Respondent's assertion that she delayed the payment because of questionable billing by MSS. Respondent did not pay Dr. Chawla $500 until October 9, 2013.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Barbara Brown by failing to pay the total of $2,594 to MSS for more than eight months and $500 to Dr. Chawla for more than seventeen months. HC Rpt. 83-84.

Count 16: Bernadine Ramsey

Bernadine Ramsey was injured on December 22, 2011. On December 27, she signed an A&A in favor of MSS which Respondent countersigned on January 30, 2012. On April 6, 2012, MSS agreed to accept a total of $2,200 as full and final payment of its fees. Respondent received a $13,000 settlement check on May 21, 2012. The disbursement sheet file copy, prepared on Respondent's stationery, confirms the settlement amount and approves a $2,000 reduced payment due MSS. (Though the sheet was unsigned, Respondent agreed that it accurately reflected the settlement terms.) Tr. 564.

On August 22, 2012, MSS called Ms. Ramsey and confirmed that the claim had been settled and that Ms. Ramsey had been paid. On September 21, MSS withdrew its reduction because it had not been paid. BX 16A; RX D-4.

On November 26, 2012, Respondent prepared and later received a form from Mr. Tyrone purporting to reduce the MSS fee from $4,088 to $2,000 – the same amount that appeared on the client disbursement sheet. Respondent paid MSS $2,000 on February 22, 2013. FF 124-28; BX B ¶75; BX D ¶75.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Bernadine Ramsey by failing to pay her medical provider for nine months. HC Rpt. 81-82. Indeed, rather than protecting her client's interests, as Respondent claims, her delay unnecessarily exposed her client to greater liability to MSS.

Count 17: Ishara Cormack

Ishara Cormack was injured on August 3, 2010. She and Respondent signed an A&A in favor of MSS on September 9, 2010. On June 8, 2012, MSS agreed to accept a total of $1,800 as full and final payment of its fees. The claim settled for $9,500 on June 13, 2012, when Respondent received payment in that amount. That same day, the client signed a disbursement sheet authorizing the $1,800 payment to MSS, in accordance with the reduction. Respondent paid her client the net proceeds of the settlement on June 22, 2012 but did not pay MSS or Dr. Chawla until February 1, 2013, and then only after Mr. Tyrone, the chiropractors' attorney, purported to reconfirm the MSS reduction. FF 129-34; BX B ¶79; BX D ¶79.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Ishara Cormack by failing to pay her medical providers for more than seven months. HC Rpt. 84.

Count 18: Latia Proctor

Latia Proctor was injured on March 22, 2011. In April 2011, she and Respondent signed an A&A in favor of MSS and Inder Chawla, M.D. MSS approved a reduction of its bill on June 11, 2012, from $4,381 to $2,000. Respondent received the $7,000 settlement payment for the claim on June 13, 2012, when the client also signed a disbursement sheet authorizing payments to MSS of $2,000 and to Dr. Chawla of $400.

Respondent did not pay MSS, however, and after it learned of the settlement MSS withdrew its reduction on September 21, 2012. The Hearing Committee rejected Respondent's

excuse for the non-payment, characterizing it as "exceptionally egregious." HC Rpt. 85. MSS withdrew its agreement for a reduction because its reduced bill had not been paid for more than three months, and the Hearing Committee flatly rejected Respondent's claim that MSS withdrew the reduction before her client signed the disbursement sheet. *Id*.

Respondent eventually paid MSS $2,000 on February 22, 2013, but only after receiving purported confirmation by Mr. Tyrone of the MSS fee reduction. FF 135-41; BX B ¶83; BX D ¶83.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Latia Proctor by failing to pay MSS and Dr. Chawla for ten months. HC Rpt. 81-82. Her unjustifiable delay also unnecessarily exposed her client to potentially greater liability to MSS.

Count 19: Deangelo Wooten

Injured on March 22, 2011, Deangelo Wooten and Respondent, or someone on her behalf, signed an A&A in favor of MSS and Dr. Inder Chawla in April, 2011. MSS approved a fee reduction on June 11, 2012. Respondent received a settlement payment of $6,800 on June 19, 2012. That same day, Mr. Wooten signed a disbursement sheet authorizing a payment of $2,000 to MSS (reduced from $4,686) and a payment to Dr. Chawla of $400 (reduced from $500).

MSS learned that the case had settled, and because Respondent had not paid it, MSS withdrew its reduction on September 21, 2012.

On November 26, 2012 Respondent prepared and later received a form from Mr. Tyrone purporting to reduce the MSS fee to $2,000. Even then, however, Respondent did not pay MSS or Dr. Chawla until February 22, 2013. FF 142-45; BX B ¶87; BX D ¶87.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Deangelo Wooten by failing to pay his medical providers a total of $2,400 for more than eight

months after she settled his claim. Her inexcusable delay caused him potentially significant prejudice: it exposed him to a possible additional claim by MSS for $2,686, when his net settlement payment was only $1,328. HC Rpt. 85; FF 144-45.

Count 20: Ayonia Allen

Ayonia Allen was injured on January 10, 2012 and later that month both she and Respondent (or someone on her behalf) signed an A&A in favor of MSS. On June 26, 2012, MSS agreed to accept a reduced fee of $1,000 as full and final payment for its services. Respondent received $16,500 in settlement funds on July 3, 2012, and the client signed a disbursement sheet authorizing the $1,000 payment to MSS that same day.

On August 9, MSS learned that the claim had been settled and, when it still had not been paid, withdrew its fee reduction on September 21. As with the other MSS cases, on November 26, 2012, Respondent prepared, and later received, a form from Mr. Tyrone purporting to confirm the earlier reduction in the MSS fee. Respondent eventually paid MSS on January 16, 2013. FF 148-53; BX B ¶91; BX D ¶91. Once again, the Hearing Committee rejected Respondent's purported justifications for the delay.

Respondent violated Rules 1.15(c) and 1.15(d) when she failed to pay MSS for more than six months. HC Rpt. 85-86. Her unjustifiable delay also potentially exposed her client to greater liability to MSS.

Count 21: Kwaku Ansah-Twum

Kwaku Ansah-Twum was injured on April 7, 2012. He and Respondent signed an A&A in favor of MSS and Inder Chawla, M.D. later that month. Respondent received a $7,800 settlement payment on October 31, 2012.

On November 28, 2012, Respondent prepared and later received a form from Mr. Tyrone purporting to reduce the MSS fee from $5,274 to $1,758. MSS refused to recognize any such reduction. On December 10, 2012, the client signed a disbursement sheet authorizing payment of Dr. Chawla's entire $350 fee, and payment of the reduced fee to MSS. Respondent did not pay Dr. Chawla until April 2013. Respondent did not pay MSS anything. BX B ¶95; BX D ¶95.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Kwaku Ansah-Twum by failing to pay Dr. Chawla for more than four months and failing ever to pay MSS at least $1,758. HC Rpt. 86.

Count 22: Leroy Stroy

Mr. Stroy was injured on January 15, 2012. He and Respondent signed an A&A in favor of MSS later that month. Respondent received a $4,700 settlement on July 10, 2012. On July 25, 2012, MSS agreed to reduce its fee by $500 to $1,985, and on August 20, 2012, Mr. Stroy signed a disbursement sheet approving that payment to MSS.

On August 27, 2012, MSS learned that the case had settled; because it had not been paid MSS withdrew its reduction on September 21, 2012. Respondent paid MSS the reduced fee of $1,985 on February 6, 2013. FF 159-63; BX B ¶99; BX D ¶99.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Leroy Stroy by failing to pay MSS for ten months. HC Rpt. 87. Moreover, her delay led MSS to withdraw its reduction, thereby unnecessarily exposing her client to an additional claim by MSS for $500 – the amount of the withdrawn reduction and the amount of the net settlement paid to Mr. Story. RX E-22.

Count 23: Dujuan Gant

Dujuan Gant, an MSS patient, was injured on April 20, 2011. In early May, Mr. Gant's mother and Respondent (or her representative) signed an A&A in favor of MSS. On August 1, 2012, Respondent received $17,500 in settlement funds. That same day, MSS approved a reduction of its bill, and Mr. Gant's mother – again on his behalf – signed a disbursement sheet authorizing payment of $850 to MSS.

MSS learned in late August that the case had settled and, because it had not been paid, on September 21, 2012 withdrew its reduction.

On November 26, 2012, Respondent prepared and later received a form from Mr. Tyrone purporting to reduce the MSS fee to $850. Respondent paid MSS on January 8, 2013. FF 164-71; BX B ¶103; BX D ¶103.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Dujuan Gant by failing to pay MSS for five months. HC Rpt. 87. In addition, that delay prejudiced her client since it caused MSS to withdraw the reduction in medical fees that it had previously granted. FF 168.

Count 24: Michael Blakeney

Michael Blakeney was injured on February 4, 2012. He and Respondent signed an A&A in favor of MSS later that month. On November 26, 2012, Respondent prepared and later received a form from Mr. Tyrone purporting to reduce the MSS fee from $5,287 to $1,798. MSS, however, did not agree to any reduction in its medical bills for Mr. Blakeney, and refused to agree to the reduction signed by Mr. Tyrone. Respondent received $9,000 in settlement funds on December 11, 2012. The next day, Mr. Blakeney signed a disbursement sheet authorizing payment to MSS

of $1,798. Respondent has not paid MSS anything on behalf of Mr. Blakeney. FF 172-76; BX B ¶107; BX D ¶107.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Michael Blakeney by failing ever to pay MSS anything. HC Rpt. 81-82, 87.

Count 25: Kimberly Kenner

Kimberly Kenner was injured on March 24, 2012. She and Respondent signed an A&A in favor of MSS on March 30 and April 12, 2012, respectively. On July 25, 2012, MSS approved a reduction of its medical bill in an unspecified amount, but withdrew the reduction on September 21, 2012. On November 26, 2012, Respondent prepared, and later received, a form from Mr. Tyrone purporting to reduce the MSS fee from $4,765 to $1,220. Respondent received a $6,900 settlement payment on December 10, 2012. On December 11, 2012, Ms. Kenner signed a disbursement sheet approving a $1,220 payment to MSS. Respondent, however, has not paid MSS anything on behalf of Ms. Kenner. FF 177-82; BX B ¶111; BX D ¶111.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Kimberly Kenner by failing to pay MSS anything. HC Rpt. 87-88.

Count 26: Ashanti Tita

Ashanti Tita was injured in April 2012. She and Respondent signed an A&A in favor of MSS that same month. On November 28, 2012, Respondent obtained from Mr. Tyrone a document purporting to reduce the MSS fee from $7,161 to $1,432. The claim settled on February 13, 2013, when Respondent received $30,000 in settlement proceeds. On February 15, 2013, Ms. Tati signed a disbursement sheet authorizing payment to MSS of $1,432. On February 26, 2013, MSS learned of the February 15 settlement. MSS refused to honor the reduction signed by Mr. Tyrone.

Respondent has not paid MSS anything on behalf of Ms. Tita. FF 183-87; BX B ¶115; BX D ¶115.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Ashanti Tita by failing ever to pay MSS anything. HC Rpt. 88.

Count 27: Anthony Pearcy

Anthony Pearcy was injured on May 18, 2011 and signed an A&A in favor of MSS a week later. The line for Respondent's signature is blank, and Respondent did not concede that it was valid. BX 27; Tr. 558-61. MSS did not approve a reduction of its bill for Mr. Pearcy. On November 26, 2012, Respondent sought and obtained a "Medical Reduction" from Mr. Tyrone purporting to reduce the balance for MSS from $3,994 to zero. The claim settled on December 11, 2012 and Respondent received $13,000 settlement proceeds at that time. BX B ¶119; BX D ¶119. On December 12, 2012, Mr. Pearcy signed a disbursement sheet but did not authorize any payment to MSS. Respondent has not paid MSS anything on behalf of Mr. Pearcy. FF 188-93; RX E-27; Tr. 212.

Disciplinary Counsel argued that Respondent violated Rules 1.15(c) and 1.15(d) by failing promptly to pay MSS, and the Hearing Committee agreed. Disciplinary Counsel PFF 166-70; HC Rpt. 88. However, the client did not authorize any payment to MSS, and the file documents suggest the MSS bill was written off. We therefore disagree with the Hearing Committee on this matter, and conclude that Disciplinary Counsel failed clearly and convincingly to prove any violation of Rules 1.15(c) and 1.15(d) with respect to Respondent's representation of Anthony Pearcy.

Count 28: Maria Seals

Maria Seals was MSS's patient and Respondent's client. Injured on March 22, 2012, she signed an A&A in favor of MSS the next day. Respondent signed the A&A on April 11, 2012.

On December 7, 2012, Respondent prepared, and later received, a form from Mr. Tyrone purporting to reduce the MSS fee from $5,618 to $1,873 but MSS did not approve that reduction. Respondent received $24,250 in settlement of the claim on December 18, 2012. That same day Ms. Seals signed a disbursement sheet authorizing payment of $1,873 to MSS. Respondent paid that reduced amount to MSS on March 7, 2013. MSS accepted the payment, but was unwilling to treat it as a full payment because Mr. Tyrone had no authority to compromise MSS's bills. FF 194-98; BX B ¶122; BX D ¶122.

The Hearing Committee refused to find a Rules violation because it was unwilling to conclude that a three-month delay in payment is "necessarily not prompt [*sic*]". HC Rpt. 88-89. We disagree. There was no good cause for the delay in paying MSS because the Hearing Committee rejected Respondent's across-the-board claim of billing fraud.

We have no difficulty concluding that based on these facts, Respondent's almost three-month failure to pay at least $1,873 to MSS was not prompt and violated Rules 1.15(c) and 1.15(d).

Count 29: Johnnette Tyree

Injured on May 1, 2012, Johnnette Tyree signed an A&A in favor of MSS on May 7 and Respondent's office countersigned it the next day. On November 26, 2012, Respondent prepared, and later received, a form from Mr. Tyrone purporting to reduce the MSS fee from $2,665 to $1,000. MSS did not approve a reduction of its medical bill. The claim settled on December 11, 2012 and Respondent received $6,000 in settlement proceeds at that time. On December 14, 2012,

Ms. Tyree signed a disbursement sheet approving the $1,000 payment to MSS. Respondent has not paid MSS anything on behalf of Ms. Tyree. FF 199-203; BX B ¶126; BX D ¶126.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Johnnette Tyree by never paying anything to MSS. HC Rpt. 89.

Count 30: Tiffany Walker

On June 27, 2011, Tiffany Walker was injured, and on August 5, 2011 she signed an A&A in favor of MSS that Respondent, or someone on her behalf, also signed. On July 25, 2012, MSS approved a reduction of its bill, but MSS's records do not identify the amount; MSS withdrew that reduction on September 21, 2012. On October 8, 2012 Ms. Walker signed a purported "rescission" of the A&A, but on November 26, 2012, Respondent prepared, and later received, a form from the individual chiropractors' attorney purporting to reduce the MSS fee from $7,493 to $2,500. The claim settled on December 11, 2012 when Respondent received the $10,000 proceeds and Ms. Walker signed a disbursement sheet authorizing payment of $2,500 to MSS. Respondent has not paid MSS anything on behalf of Ms. Walker. FF 204-08; BX B ¶130; BX D ¶130.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Tiffany Walker by failing to pay MSS anything on her behalf. HC Rpt. 89-90.

Count 31: Shelaya Wright

Shelaya Wright was injured on March 24, 2011. A week later, she signed an A&A in favor of MSS that was also signed by Respondent or someone on her behalf. On July 25, 2012, MSS approved an unspecified reduction of its medical bill, but on September 21, 2012, before Respondent settled Ms. Wright's claim, MSS withdrew the reduction. On November 26, 2012, Respondent prepared, and later received, a form from Mr. Tyrone purporting to reduce the MSS fee from $6,558 to $560. The claim settled on December 12, 2012 and Respondent received the

$5,132 proceeds at that time. On December 14, 2012, Ms. Wright signed a disbursement sheet that authorized payment of $560 to MSS. On April 2, 2013, MSS received a check in that amount written on Respondent's escrow account. FF 209-13; BX B ¶133; BX D ¶133.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Shelaya Wright by failing to pay MSS for more than three months. HC Rpt. 90.

Count 32: Aaron Atkinson

On July 28, 2011, Aaron Atkinson was injured. He and Respondent, or someone on her behalf, signed an A&A in favor of MSS in August 2011. On December 12, 2012, Respondent prepared, and later received, a form from Mr. Tyrone purporting to reduce the MSS fee from $5,351 to $1,851. MSS did not authorize a reduction of its bill. The claim settled on December 20, 2012 and Respondent received the $12,365 settlement proceeds at that time. On January 17, 2013, Mr. Atkinson signed a disbursement sheet approving payment of $1,851 to MSS. Respondent did not pay MSS anything towards Mr. Atkinson's bill. FF 214-19; BX B ¶137; BX D ¶137.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Aaron Atkinson by not paying MSS at least $1,851. HC Rpt. 90.

Count 33: Daynica Randolph

Daynica Randolph was MSS's patient and Respondent's client. On August 26, 2011, Ms. Randolph was injured. On August 30, 2011, Ms. Randolph's mother signed an A&A in favor of MSS; Respondent, or someone on her behalf, signed the A&A, but did not date the signature. On November 28, 2012, Respondent prepared, and later received, a form from Mr. Tyrone purporting to reduce the MSS fee from $2,117 to $706. MSS did not approve a reduction of its bill for Ms. Randolph. The claim settled on December 12, 2012 and Respondent received the $9,700 proceeds

at that time. On January 5, 2013, Ms. Randolph's mother signed a disbursement sheet on behalf of her daughter approving a $706 payment to MSS. Respondent has paid MSS nothing on behalf of Ms. Randolph. FF 220-24; BX B ¶141; BX D ¶141.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Daynica Randolph by failing to pay anything to MSS on her behalf. HC Rpt. 90-91.

Count 34: Karen Rush

Karen Rush was injured on April 3, 2012. That same month, Ms. Rush and Respondent (or someone on her behalf) signed an A&A in favor of MSS. The claim settled on January 2, 2013 and Respondent received the $9,525 settlement proceeds at that time. On January 3, 2013, Respondent prepared, and later received, a form from Mr. Tyrone purporting to reduce the MSS fee from $3,892 to $1,668. MSS did not authorize a reduction of its bill. On January 28, 2013, Ms. Rush signed a disbursement sheet authorizing payment of $1,668 to MSS. Respondent has not paid anything to MSS on behalf of Ms. Rush. FF 225-29; BX B ¶145; BX D ¶145.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Karen Rush by not paying MSS anything on her behalf. HC Rpt. 91.

Count 35: Antonio Kent

Antonio Kent was injured on May 28, 2012. He signed an A&A in favor of MSS on May 31, and an agent of Respondent countersigned the A&A on August 20. 2012. On January 9, 2013 Respondent prepared, and later received, a form from Mr. Tyrone purporting to reduce the MSS fee from $3,112 to $1,000. MSS did not authorize reduction of its bill. On February 8, 2013, Mr. Kent signed a disbursement sheet authorizing a $1,000 payment to MSS. The claim settled on February 26, 2013. Respondent received the $11,248 proceeds at that time but has not paid anything to MSS on behalf of Mr. Kent. FF 230-34; BX B ¶149; BX D ¶149.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Antonio Kent by failing to pay anything to MSS. HC Rpt. 91.

Count 36: Charles Noble

Charles Noble was injured on April 3, 2012, and signed an A&A in favor of MSS two days later. Respondent, or someone on her behalf, signed the A&A on April 12, 2012. On November 26, 2012, Respondent prepared, and later received, a form from Mr. Tyrone purporting to reduce the MSS fee from $5,608 to $1,377, but MSS did not authorize a reduction of its bill. The claim settled on January 31, 2013 and Respondent received the $5,400 proceeds at that time. On February 11, 2013, Mr. Noble signed a disbursement sheet, prepared by Respondent, authorizing payment of $1,377 to MSS. Respondent has not paid anything to MSS on behalf of Mr. Nobel. FF 235-39; BX B ¶153; BX D ¶153.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Charles Noble, Jr. by not paying anything to MSS on his behalf. HC Rpt. 91-92.

Count 37: Lavonya Lawrence

Lavonya Lawrence was MSS's patient and Respondent's client. On April 19, 2012, Ms. Lawrence was injured; five days later, she signed an A&A in favor of MSS. Respondent, or someone on her behalf, signed the A&A on May 7, 2012. On January 3, 2013 Respondent prepared, and later received, a form from Mr. Tyrone purporting to reduce the MSS fee from $3,755 to zero, noting that MSS had already been paid a $2,500 PIP. MSS did not approve a reduction of its bill. The claim settled on February 13, 2013 and Respondent received the $8,309 proceeds at that time. That same day Ms. Lawrence signed a disbursement sheet that did not approve any payment to MSS, again noting a PIP disbursement. Respondent has not paid anything to MSS on behalf of Ms. Lawrence. FF 240-45; BX B ¶157; BX D ¶157; RX E-37. Based on that

evidentiary record, the Hearing Committee concluded there was not clear and convincing evidence that any amount was owed to MSS, and accordingly refused to find a Rule violation. HC Rpt. 92. We agree with that determination.

II. RESPONDENT VIOLATED RULE 1.15(a) (FAILURE TO PROTECT PROPERTY OF OTHERS)

Rule 1.15(a) requires a lawyer to hold funds of a client or third party in an approved trust account separate from the lawyer's own funds, with the degree of care required of a professional fiduciary. Rule 1.15, comment [1]. Disciplinary Counsel asserts that Respondent violated Rule 1.15(a) with respect to Count 2 (D.F.) by failing to place a $2,500 payment belonging to Dr. Yousefi in trust.

We agree with the Hearing Committee that Respondent violated Rule 1.15(a) after she received a $2,500 check in October 2007. The PIP check constituted funds belonging to Dr. Yousefi. Respondent did not deposit that check in her escrow account or pay it over to him, and the Hearing Committee rejected her excuse for not doing so. Instead, Respondent merely placed the check in her files, where it lapsed with the passage of time. After Dr. Yousefi complained about not being paid, Respondent requested and received a replacement check from the insurance carrier in April 2010, which she eventually paid over to Dr. Yousefi in 2014. *See supra* p. 5.

Respondent had a fiduciary duty to Dr. Yousefi to protect his property and failed to do so. *See In re Lenoir*, 585 A.2d 771, 779 (D.C. 1991) (per curiam) (finding violation of DR 9-103(B)(2) where attorney retained for several months uncashed checks belonging to the client). As a consequence she violated Rule 1.15(a).

III. RESPONDENT COMMITTED INTENTIONAL MISAPPROPRIATION AND VIOLATED RULE 1.15(a)

A. Respondent's Escrow Account Balances

Rule 1.15(a) prohibits misappropriation, defined as "any unauthorized use of a client's funds entrusted to [a lawyer], including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not [the lawyer] derives any personal gain or benefit therefrom." *In re Cloud*, 939 A.2d 653, 659 (D.C. 2007) (internal citation omitted). Unauthorized use occurs where "the balance in the attorney's . . . account falls below the amount due to the client [or third party], regardless of whether the attorney acted with an improper intent." *In re Edwards*, 990 A.2d 501, 518 (D.C. 2010) (appended Board report). Thus, "when the balance in [a] [r]espondent's . . . account dip[s] below the amount owed to" the respondent's client, misappropriation has occurred. *In re Chang*, 694 A.2d 877, 880 (D.C. 1997) (per curiam) (appended Board report) (citing *In re Pels*, 653 A.2d 388, 394 (D.C. 1995)).

Sampling 19 of the 37 personal injury cases involved in this matter, the Hearing Committee totaled the discrete amounts Respondent owed to Dr. Yousefi and to MSS, and thus determined the minimum aggregate amount that Respondent should have maintained in her escrow account. The tabulation, set forth below, is supported by substantial evidence (FF 246):

Settlement Date	Client	Amount Owed	Aggregate Required Escrow	Disbursement Date	Count
8/1/2007	Marjorie Barnes	$1,156	$1,156	N/A	1
1/26/2009	Markitta Robinson	$2,500	$3,656	4/11/2014	3
6/9/2010	Barbara Way	$2,700	$6,356	4/11/2014	6
7/25/2010	Minnie Ward-Huston	$3,000	$9,356	4/11/2014	7
8/10/2010	Sherlita Boyd	$2,567	$11,923	4/11/2014	8
8/16/2010	Kendra Whitaker	$3,371	$15,294	4/11/2014	9
9/8/2010	Bryant Jones	$2,528	$17,822	4/11/2014	5
10/25/2010	Claudia Ortiz	$1,523	$19,345	4/11/2014	10
12/28/2010	Charlene Pitts	$2,100	$21,445	4/11/2014	4
1/26/2012	Tiffany Quarles	$3,700	$25,145	2/6/2013	12
3/14/2012	K'vante Petty	$1,219	$26,364	2/1/2013	13
5/2/2012	Barbara Brown	$2,594	$28,958	2/1/2013	15
5/2/2012	Barbara Brown	$500	$29,458	10/9/2013	15
5/21/2012	Bernadine Ramsey	$2,000	$31,458	2/22/2013	16
6/13/2012	Ishara Cormack	$1,800	$33,258	2/1/2013	17
6/13/2012	Latia Proctor	$2,400	$35,658	2/22/2013	18
6/19/2012	DeAngelo Wooton	$2,400	$38,058	2/22/2013	19
7/3/2012	Ayonia Allen	$1,000	$39,058	1/16/2013	20
7/10/2012	Leroy Stroy	$1,985	$41,043	2/6/2013	22
8/1/2012	Dujuan Gant	$850	**$41,893**	1/8/2013	23
	TOTAL	**$41,893**	**$41,893**		

As of August 1, 2012, Respondent owed medical providers a minimum of $41,893 for the 19 selected cases. At least that amount should therefore have been retained in escrow until January 8, 2013, when Respondent made the first relevant payment of $850 to MSS on behalf of Dujuan Gant. However, during the period October 5-8, 2012, the account contained only $36,780, and

on October 19, 2012 the account contained only $36,683. BX 38-D; Resp. Reply Br. at 16, n.15. Based on that shortfall the Hearing Committee concluded that Respondent had committed misappropriation. HC Rpt. 95-97.

We agree that the methodology Disciplinary Counsel used to calculate the amounts due the medical providers was conservative, in each case giving Respondent the benefit of the doubt. Indeed, the Hearing Committee's analysis was even more cautious, taking into account fewer matters than those relied upon by Disciplinary Counsel in its presentation. BC Br. at 18-19.[11] Thus we are confident in the veracity of the computation, and agree that Respondent committed misappropriation on October 5-8, 2012 and October 19, 2012.

Respondent raises two challenges to this conclusion.

First, Respondent contends that Disciplinary Counsel failed to prove that the settlement moneys were, in fact, deposited in her escrow account in the first instance. Resp. Br. at 30-31.

Respondent correctly states that to proceed on the "account balance" theory of proof, Disciplinary Counsel must show that the attorney actually deposited entrusted funds into escrow. *See In re Edwards*, 808 A.2d 476, 484 (D.C. 2002) ("[t]he fact that the balance in the escrow account fell below [the amount required to be held in trust] . . . is without significance because the [client's] money was never deposited into the account."); *see also In re Ingram*, 584 A.2d 602, 602-603 (D.C. 1991) (Disciplinary Counsel did not establish unauthorized use where the client's funds were kept intact in the client's file).

[11] Indeed, Respondent can hardly claim otherwise. If one were to credit her mistaken argument that the *total* amounts of the medical bills were in dispute, she would have had to maintain those greater amounts in escrow. Tr. 604-05; *supra* p. 6. For the 19 clients at issue, the unreduced chiropractors' bills totaled more than $81,858, far in excess of the approximately $37,000 contained in the account on the relevant dates.

In the typical misappropriation case, Disciplinary Counsel offers direct proof of individual deposits. That is the most appropriate means of proving entrusted money is placed in an escrow account. It is the methodology that we expect Disciplinary Counsel regularly to employ. Had such evidence – obtained from Respondent, from the bank or from insurance carrier sources – been offered to support the charges in this matter, we would not hesitate to recognize its probative value. In this case, Disciplinary Counsel offered direct evidence in only six cases, BC Br. at 17, and asserts that more direct proof was unavailable due to the ambiguity in available bank records and the total disarray of Respondent's records. BC Br. at 1, 5, 11, 15, 20, 25.

Respondent's records are indeed inadequate to the task. Nevertheless, we need not assess the adequacy of Disciplinary Counsel's method of proof because Respondent's new-found argument is completely at odds with the position she took before the Hearing Committee, where she repeatedly and insistently urged that all the settlement funds at issue in this case were timely deposited in her trust account. She thus claimed forcefully to the Hearing Committee that she "placed in, and maintained, the full amount of the disputed funds in her SunTrust Bank trust account" (Respondent's Proposed Findings of Fact, Conclusions of Law, and Recommendation for No Sanction at 4), and argued that she "properly placed the amounts offered to MSS on the disbursement sheets in her escrow account until the [MSS] investigation could be completed." *Id*. at 10. According to Respondent, when "Dr. Yousefi and [MSS] refused to agree to the reductions, Ms. Nave had no other option but to place the funds at issue in her trust account, which she did." *Id*. at 11-12. In fact, Respondent claimed that she placed the amount of the providers' original, unreduced, bills in escrow:

> When she received notice from the insurance carrier of the amount it proposed to pay, she indicated on the disbursement sheet the amount intended for the medical service provider and requested a

> write-down to facilitate a settlement with the client. When the provider agreed to the amount, she paid them. When they did not, *she properly withheld that portion of the insurance carrier's proposed settlement from the provider and deposited it in her trust account*." *Id*. at 21. (emphasis added).

Because Respondent insistently admitted as much, we conclude that all relevant settlement funds were deposited in Respondent's escrow account, and reject her belated claim that Disciplinary Counsel failed in this aspect of its proof.[12]

As a corollary, Respondent also argues that Disciplinary Counsel failed to prove *when* the escrow deposits occurred. Resp. Br. at 7. It is self-evident that funds could not have been misappropriated from the escrow account unless they were deposited *before* the misappropriation took place. The Hearing Committee found that the deposits were so made, basing its analysis on the dates of disbursement sheets signed by Respondent's clients. It quite logically reasoned from the dates of disbursement sheets, and consistent evidence showing when Respondent's clients had received settlement payouts, that escrow deposits must have been made before October 5, 2012, the date of the first misappropriation:

> Respondent correctly notes that the …"Disbursement or Settlement Date" does not accurately reflect when settlement funds were deposited in Respondent's trust account. [footnote omitted]. The parties offer evidence of when Respondent's clients were paid in only five cases …. These five clients received their settlement check between four and nine days after signing the Client Disbursement sheet. Respondent testified that the settlement check may not be received for up to two weeks after the client signs the Client Disbursement sheet and that the actual deposit can take a few more days. … The 19 cases relied on by Bar Counsel as evidence of misappropriation were settled or had Client Disbursement sheets signed at least 46 days prior to October 5, 2012 – the first date that Bar Counsel alleges that Respondent's trust account fell below the

[12] In making this finding, we recognize that the evidence showed that in 2007, Respondent failed to deposit a settlement check owed Dr. Yousefi into the escrow account. *See supra* at 13-14. This single instance, occurring years before the misappropriations at issue, is insufficient to support any suggestion that Respondent may not have deposited checks in 2012.

> amounts she was required to safeguard. Accordingly, the Committee finds that there is clear and convincing evidence that the settlement checks for these 19 clients were received and should have been deposited in Respondent's trust account prior to October 5, 2012.

HC Rpt. 96.

Because we have definitively determined the dates upon which Respondent actually received settlement payments, *supra* p. 39, we reach the same conclusion as the Hearing Committee, but with clear and convincing certainty. In each of the 19 cases at issue, Respondent's Answer to the Specification of Charges admitted that settlement checks were received on or about the date her client signed the disbursement sheet. *Supra* p. 11. Respondent testified she deposited settlement checks in escrow within three or four days thereafter. Tr. 760. That timing sequence is consistent with specific documents contained in Respondent's files showing that it never took more than nine days after a disbursement sheet was signed for Respondent to disburse to her clients their portion of a settlement. HC Rpt. 96; RX E-12 at 2, 4; RX E-13 at 2, 3; RX E-14 at 2-7; RX E-15 at 2, 3; RX E-17 at 2, 4; RX E-26 at 2, 3. There is no credible evidence that this regular practice was not followed in the cases at issue.[13] Thus, we conclude that Respondent deposited the last of the relevant settlement funds in her escrow account within three or four days after August 1, 2012, two months before the first misappropriation took place. Disciplinary Counsel thus clearly and convincingly proved that Respondent misappropriated at least $5,203 in third party funds during October 5-8, 2012, and at least $5,380 in third party funds on October 19, 2012.

[13] Respondent points to problems that arose when she started to use online deposits. Resp. Br. at 35-36. The bank witness upon whom she relies, however, was obviously uncertain as to when those problems occurred, guessing that they took place "around 2012." Tr. 466-67. Respondent, though, admitted that the issues had been "worked out" by early 2012, well before the misappropriation. Tr. 735.

It remains for us to determine Respondent's state of mind, *i.e.*, whether the misappropriation was intentional, reckless, or negligent. Disciplinary Counsel contends that Respondent's conduct was intentional, or at least reckless; Respondent denies any misappropriation, but argues in the alternative that she misappropriated negligently. Resp. Br. at 42-44. Our determination of Respondent's level of intent is a conclusion of law, and we owe no deference to the Hearing Committee's finding that Respondent's misappropriation was merely negligent. *See In re Micheel*, 610 A.2d 231, 234-35 (D.C. 1992).

A respondent's level of intent can be established by circumstantial evidence. *See In re Mabry*, 11 A.3d 1292 (D.C. 2011) (per curiam) (holding that the respondent's misappropriation was intentional where the respondent did not participate at any stage of the disciplinary proceeding and where "much of the evidence [wa]s circumstantial"). In this case, however, there is disturbing direct evidence powerfully indicating that Respondent's misappropriation was intentional.

When Dr. Yousefi asked Respondent to explain why she was not paying his bills, she told him she that she had not paid him because she had used the funds to pay legal expenses she had incurred in nasty litigation with her boyfriend. She said she "had a fight with her boyfriend and caused [*sic*: cost] her about $80,000 to go through the court fighting and . . . that's the reason she doesn't have the money. . . . [S]he said just bear with me a few months and we'll take care of it." 10/1/14 Tr. 78. Respondent said she "was having a dispute with her boyfriend which made her unable to pay [Dr. Yousefi] the money that she owed" him. 10/1/14 Tr. 143-44. The Hearing Committee found this direct evidence of Respondent's intent to be credible. HC Rpt. 98.

Moreover, Respondent indirectly confirmed her motivation. She acknowledged that she filed for bankruptcy in August 2009, and conceded that the "vast majority" of the settlements in

this case took place after the litigation "virtually stripped her of everything she had worked for." Tr. 756-57.

The Hearing Committee did not believe that the evidence was sufficient to support a finding of intentional misappropriation. HC 97-98. We disagree.

Respondent's trust account fell materially below the amount she was obligated to hold for the medical providers. The account was out of trust on multiple days, and Respondent failed to provide any credible explanation refuting the clear import of her statements to Dr. Yousefi. She provided no records tracking settlement proceeds, and provided no alternative explanation why funds were missing. Even sampling only 19 of the cases at issue in this matter, the deficiency in the account was substantial – exceeding $5,000 at a minimum – and was directly linked to a persistent pattern of withholding funds from third parties to whom those funds belonged. Rather than explain how the misappropriation took place, Respondent insisted at the hearing that her escrow account was never out of trust. Tr. 538-40.

Disciplinary Counsel bears the burden of proving misappropriation, and that burden never shifts to a respondent. *In re Anderson*, 778 A.2d 330, 336-37 (D.C. 2001). However, we may consider Respondent's failure to explain the disposition of entrusted funds in determining whether misappropriation took place. In *In re Godfrey*, 583 A.2d 692 (D.C. 1990), the respondent cashed a settlement check, failed to deposit the funds into his trust account, failed to keep adequate records, and could not explain what happened to the funds. *Id*. at 692. The Court found that the respondent had engaged in intentional and dishonest misappropriation because he "failed to provide a satisfactory explanation" for the disposition of the entrusted funds. *Id*.; *see In re Berkowitz*, 801 A.2d 51, 57 (D.C. 2002) (appended Board report); *In re Marlow*, 652 A.2d 1111,

1113 (D.C. 1995) ("In *In re Godfrey*, we ordered disbarment and held that an attorney's failure to explain loss of client funds constituted misappropriation.").

We may also consider not only Respondent's admissions to Dr. Yousefi, but her lack of any exculpatory explanation, in assessing whether the misappropriation was dishonest:

> the Board may weigh, together with all of the other evidence, an attorney's explanation for – or conversely inability to explain satisfactorily – the use of a client's funds in deciding whether [Disciplinary] Counsel has met its burden of proving dishonest misappropriation by clear and convincing evidence.

In re Thompson, 579 A.2d 218, 221 (D.C. 1990). Respondent's "inadequate or non-existent explanation for use of a client's funds [constitutes] circumstantial evidence which the Board may consider, along with all the other evidence, in determining whether [Disciplinary] Counsel has proven dishonesty by clear and convincing evidence . . . . [T]he adequacy of an attorney's explanation for use of client funds is one factor – and an important one – in the decision whether misappropriation has been intentional." *Id*. at 223 (citations omitted).

Taking into account all these circumstances, we conclude that Respondent's misappropriation was intentional.

RECOMMENDATION AS TO SANCTION

In *In re Addams*, 579 A.2d 190, 191 (D.C. 1990) (en banc), the Court held that "in virtually all cases of misappropriation, disbarment will be the only appropriate action unless it appears that the misconduct resulted from nothing more than simple negligence." *Addams*, 579 A.2d at 191. A lesser sanction may be appropriate only in "extraordinary circumstances," such as those found in *In re Kersey*, 520 A.2d 321 (D.C. 1987), where an attorney's alcoholism was taken to mitigate an intentional misappropriation he committed during the period of his alcoholism. *See Anderson*, 778 A.2d at 335; *see also In re Hewett*, 11 A.3d 279 (D.C. 2011) (finding extraordinary

circumstances where the motive for an intentional misappropriation was the protection of the client).

There are no "extraordinary" mitigating circumstances in this case sufficient to warrant a departure from the rule of presumptive disbarment. Respondent has no prior disciplinary history (Resp. Br. at 47), but that cannot blind us to the fact that the misappropriations in this matter were intentional, and part of a pattern of misconduct – including 34 discrete financially-based Rules violations – that transpired over the course of more than a year. *In re Berryman*, 764 A.2d at 773 ("absence of a prior disciplinary record . . . even when coupled with other mitigating factors, is not a sufficient [*sic*] to overcome the presumption of disbarment"); *In re Pierson*, 690 A.2d at 949-50 (absence of prior disciplinary record, history of *pro bono* work, and forthrightness with Hearing Committee and Board do not warrant departure from the *Addams* rule); *In re Clarke*, 684 A.2d 1276, 1281 (D.C. 1996) (per curiam) ("respondent's lack of prior disciplinary history, his financial distress, and his cooperation with Bar Counsel do not qualify as mitigating factors sufficient to justify departure from the sanction of disbarment."); *see also In re Robinson*, 583 A.2d 691, 692 (D.C. 1990) (respondent disbarred for misappropriation despite relatively small sum involved, quick restoration of funds, lack of financial harm to client, single instance of misappropriation, respondent's relative inexperience, absence of prior disciplinary record, and favorable character testimony). Moreover, although Respondent cooperated during the disciplinary proceedings she has persistently denied any culpability, failed to explain why her misappropriations took place, and proffered utterly meritless excuses for her failures promptly to pay her clients' medical providers.[14]

[14] Respondent argues that she instituted remedial measures to foreclose further ethical violations. Resp. Br. at 49-50 and Affidavit appended to Respondent's Brief. By Order dated October 29, 2015, the Board struck those materials from the record in this matter.

There are no extraordinary circumstances that justify excepting Respondent from the *Addams* rule of disbarment for intentional misappropriation, particularly when it was accompanied by manifold violations of Rules 1.15(c) and 1.15(d), and an ancillary violation of Rule 1.15(a).[15]

Respondent's misconduct "demonstrates absence of the basic qualities for membership in an honorable profession." *Addams*, 579 A.2d at 193. We therefore recommend that she be disbarred. The period of disbarment should run from the time Respondent files an affidavit that fully complies with D.C. Bar R. XI, § 14(g). *See* D.C. Bar R. XI, § 16(c); *In re Slosberg*, 650 A.2d 1329, 1331-33 (D.C. 1994).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: /RCB/
Robert C. Bernius
Vice Chair

Dated: June 23, 2016

All members of the Board concur in this Report and Recommendation, except Ms. Smith and Mr. Bernstein, who did not participate.

[15] Disciplinary Counsel also charged Respondent with violating Rule 8.4(c) in connection with her representation of twenty-three separate clients. The Hearing Committee found insufficient evidence to sustain the charges. HC Rpt. 92-94. The Office of Disciplinary Counsel did not except to that determination and neither party briefed the issue to the Board. Considering our disposition of this matter we find it unnecessary to discuss this issue. *See In re Bach*, 966 A.2d 350, 350-53 & n.7 (D.C. 2009) (disbarment for intentional misappropriation without addressing a Rule 8.4(d) allegation, as recommended by the Board).